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December 12, 2016

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Lieutenant Colonel Andrew Lunoff  
Designated Federal Officer  
Government-Industry Advisory Panel  
Pentagon Room 3E172  
3090 Defense Pentagon  
Washington, DC 20301-3090

Re: Comments to Government-Industry Advisory Panel

Dear Lieutenant Colonel Lunoff and Distinguished Panel Members:

The Aeronautical Repair Station Association (ARSA) is pleased to submit these comments on behalf of its members regarding the Charter of the Government-Industry Advisory Panel (the "Panel") established pursuant to section 813(b)(1) of the National Defense Authorization Act of Fiscal Year 2016.

ARSA is devoted to the advancing policy efforts addressing the needs of the global aviation maintenance industry. Regular members of the association hold repair station certificates issued by the Federal Aviation Administration under 14 CFR part 145. The vast majority of all maintenance providers in the United States are small-to-medium-sized enterprises (SMEs); association membership mirrors that fact with over 90 percent of its members falling into that category.

### **Executive Summary**

ARSA members are specifically capable and desirous of providing maintenance services to support the Department of Defense's (DOD) many aviation weapon systems. However, they face barriers precluding competition which result in a clear majority of such maintenance contracts being let to the so-called original equipment manufacturers (OEMs), purportedly because of the "lack of technical data." This perceived deficiency saddles taxpayers with higher costs while robbing DOD access to innovation, commercial technologies, and the skills and experience of a strong domestic supplier base.

ARSA believes that DOD currently has, but needs to reinforce by clarifying and enforcing, its unlimited rights in all technical data that will ensure all DOD sustainability through repair and overhaul requirements are met consistently. Our comments outline five (5) recommendations:

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- (1) Protect DOD rights that ensure open and honest competition and operational readiness.
- (2) Narrowly define detailed manufacturing and process data (DMPD) to new production activity of original items.
- (3) Clarify DOD's unlimited right to all updates and modifications to operations, maintenance, installation and training (OMIT) technical data throughout the life-cycle of the system.
- (4) Avoid or limit licensing restrictions by OEMs.
- (5) Ensure technical data rights are an evaluation factor.

These recommendations will ensure DOD's continued access to open and honest competition for standard maintenance activities, and enhance availability of the innovative technologies and processes used in commercial aviation, while significantly reducing aviation weapon-system life cycle costs.

We appreciate the Panel's thoughtful consideration of these comments, particularly as there is no representation of OEM-independent, third party service providers; parties which have a direct and abiding interest in the Panel's proceedings and outcomes. Incorporation of ARSA's recommendations into Panel recommendations will ensure appropriate representation from independent aviation maintenance providers, including several hundred SMEs.

We welcome the opportunity to discuss these recommendations with the Panel at any time.

### **Specific Recommendations**

- (1) Protect DOD rights to ensure open and honest competition and operational readiness.

DOD's ability to obtain and maintain (a) cost-effective sustainment and (b) continued access to innovative products and processes is through a healthy private sector. The health of the private sector depends upon investments by independent (non-OEM) service providers who must be able and encouraged to compete for all DOD aviation maintenance contracts. Therefore, the statute and resultant regulations need to explicitly state that DOD has rights to and in maintenance technical data which will allow open and honest competition ensuring cost-effective operational readiness.

The United States has a large private-sector capable of providing maintenance services for DOD aviation weapon systems. For example, there are over 4,000 companies that hold air agency certificates from the Federal Aviation Administration (FAA). These companies can readily provide a substantial pool of talent for sustaining and maintaining

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DOD aviation weapon systems. Unfortunately, only a small portion of these companies currently compete for DOD contracts.

The best method for ensuring national defense is for DOD to exercise its freedom to choose maintenance providers through open and honest competitive acquisition. This is not happening today; well over half of DOD maintenance contracts are awarded on a sole source basis – without any competition – to the so-called OEM.<sup>1</sup> Research establishes that this method of award is justified and approved on the basis of a lack of technical data rights. This is an unfortunate and illogical result considering the fact that existing law provides for **unlimited** government rights in OMIT technical data. The only exception is access DMPD, which needs to be associated with new, original production activities, not information needed to restore a system to operational readiness (see Item (2) below).

DOD has effectively limited its choices for sustaining its operational readiness to two: (1) sending work to the OEM; or (2) maintaining its own assets. DOD should be able to readily and easily choose support from the thousands of capable service providers to maintain and sustain its arsenal while driving down costs, fostering innovation and improving safety.

Only through open and honest competition can DOD reach the objectives of cost-effective use of DOD's procurement funds; it will reward contractors for innovation, invention and investments. Furthermore, it is impossible for DOD to encourage private sector investment in new products, technologies or processes – or ensure DOD access to similar commercial innovations – if thousands of capable contractors are effectively barred from competing for DOD maintenance solicitations because technical data rights are unclear or unenforced.

Innovation, invention and investment do not end once a system is purchased. Rather, real-world operation and an ever-evolving military environmental demands require continued investment, invention and innovation throughout the life-cycle of every weapon system, many of which remain in service for forty years or more. Commercial experience establishes the fact that parties operating independently of the OEM generate most new technologies, products and services in the aftermarket for various vehicles, aircraft, ships and other systems. The military marketplace should be no

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<sup>1</sup> For example, with aviation weapon systems, the [3rd Quarter FY 2015 DOD Competition Reporting](#) (the latest quarter for which Major Command-level data is available) shows:

- NAVAIR only competed 19.2% of its \$19.8B of quarterly spend (~80% sole source); and
- AFMC competed 27.3% of its \$27.4B of quarterly spend (~72% sole source).

Furthermore, DOD's latest Competition Reporting (3rd Quarter FY 2016) establishes that the Army, Air Force and Navy – as well as DOD overall – have reached a lower level of competition when compared to the already poor FY 2015 levels.

(<http://www.acq.osd.mil/dpap/policy/policyvault/USA003971-15-DPAP.pdf>)

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different. Unfortunately, currently, DOD does not enjoy the fruits of private sector investment throughout the life-cycle of its weapon systems due to lack of competition.

In fact, not only does the lack of competition for maintenance contracts prevent DOD from accessing all commercial innovations and technologies, it significantly increases the risk that DOD cannot fulfill its missions. Sole sources for parts and repair are single points of failure that undermine DOD readiness. As an example, in February 2015, a fire destroyed the factory where C-130J propellers were manufactured, leaving DOD without a source of spare parts. DOD sole sourced its C-130J propeller maintenance to the OEM for the sixteen (16) years of C-130J operation (citing a lack of rights to depot-level maintenance technical data as a reason). In contrast, commercial airlines operating other propeller types manufactured at the same facility suffered few ill effects; independent maintenance providers had a large pool of spares, and had reverse-engineered alternative FAA-approved parts and repairs, enabling the worldwide fleet to continue uninterrupted operations.

Furthermore, independent parties increase DOD depots' capabilities and cost-effectiveness. It is often uneconomical for DOD to invest in comprehensive depot-level capability for maintenance of every platforms' components or sub-systems. Consequently, the depots rely on a robust base of specialty repair facilities and/or parts manufacturers who can provide expertise more cost-effectively. In addition, such independent contractors can support the depots with value-added engineering and technical support, such as the development of new depot-level repair procedures (applying the latest in commercial technologies and processes) and the reverse-engineering of parts and components. These capabilities provide DOD with additional supply sources that shorten lead-times, reduce costs, improve quality and/or solve issues. Ultimately, increased use of independent maintenance contractors would enable DOD to keep the most critical and most important maintenance work "in-house".

Enabling open and honest competition through active use of DOD's rights in maintenance technical data also increases business participation. DOD's Better Buying Power 3.0 encourages an "increase small business participation...[that] remain one of DOD's most productive sources of innovation - in services as well as in products." Small businesses also provide DOD with more cost-efficient and agile solutions. The majority of independent maintenance contractors are United States SMEs, and over 80% of ARSA members – who are all FAA-certificated – are small businesses capable of competing for DOD's aviation weapon system maintenance contracts once DOD exercises its rights in maintenance technical data to promote competition.

"Real competition is the single most powerful tool available to the Department [of Defense] to drive productivity" per BBP 3.0. BBP 3.0 also states DOD should "emphasize competition by creating and maintaining competitive environments...[i]n the absence of direct competition, anything that creates a 'competitive environment' (where

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the incumbent is concerned about maintaining his or her position relative to an alternative product or service provider) has value to the Department. When direct competition at the product level is not economically viable, then alternative means of introducing competitive pressure or direct competition at lower levels should be pursued.”

“Real competition” is only possible if service providers – in particular, those who operate independently from the OEMs – are able and encouraged to compete in DOD solicitation processes. DOD’s best opportunity to introduce open and honest competition is to use its rights in OMIT technical data.

The Panel must propose a statute and associated regulations mandating that DOD has sufficient rights to a complete set of OMIT technical data which will allow any capable service provider to compete for all O-, I- and D-level maintenance contracts.

(2) Narrowly define detailed manufacturing and process data (DMPD) to new production activity of original items.

Title 10 U.S.C. § 2320(a)(2)(C)(iii) and associated regulations grant the government an unlimited right in OMIT technical data, but exclude DMPD. To our knowledge, “detailed manufacturing and process data” is not defined either in statute or regulation, and ARSA believes that the term is often interpreted too broadly. The result is that DOD lacks sufficient maintenance technical data to perform depot-level maintenance in-house or to competitively seek D-level maintenance services.

A narrow definition for DMPD to that information necessary for the production of new original systems will ensure that DOD has sufficient rights in a complete set of OMIT technical data for itself and for its service providers. Conversely, the Panel could propose minimum standards for information that must be included in a complete set of “OMIT other than DMPD” technical data to ensure DOD receives the information essential to the readiness of its systems.

Since its founding in 1984, ARSA has worked tirelessly in the commercial aviation maintenance marketplace to help define the necessary maintenance data to ensure continued airworthiness for aircraft owners. We believe that many of our commercial market recommendations – most of which are now official FAA policy or regulation – are relevant to DOD’s needs and the recommendations of this Panel.

ARSA worked with several members of the aerospace industry in 2004 to create Joint Industry Policy on FAA’s policies regarding maintenance technical data.<sup>2</sup> This joint panel included original production approval holders (UTC Aerospace Systems –

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<sup>2</sup> See [Joint Industry Policy](http://arsa.org/wp-content/uploads/2012/09/JointIndustryPolicy.pdf) package (<http://arsa.org/wp-content/uploads/2012/09/JointIndustryPolicy.pdf>).

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Hamilton Sundstrand, Pratt & Whitney, Moog, NORDAM and Sargent), independent maintenance providers (ARSA, Chromalloy, HEICO, Lufthansa Technik, and SR Technics), and an aircraft owner-operator (Delta Air Lines). This joint industry group created minimum standards for OMIT data (called "Instructions for Continued Airworthiness" or "ICA" in FAA parlance) that has helped to more clearly define the information aircraft owners and their maintenance providers must receive. We believe that the Section 813 Government-Industry Advisory Panel can use many of the same concepts in defining standards for what OMIT-other-than-DMPD must contain.

In particular, the Panel should note Joint Industry Policy sections VIII (Maintenance Manual or Section) and IX (Overhaul Manual or Section), which define the minimum information that must be available to aircraft owners and maintenance providers. The excerpts below have been edited, where noted, to replace FAA/civil aviation-specific language with general concepts that may assist the Panel in the context of DOD operations.

(A) SECTION VIII - MAINTENANCE MANUAL OR SECTION:

*The Maintenance Manual or Section should include the following information, as appropriate for the article:*

(1) *A description of the article's features and data and its components, systems, and installations should contain enough detail to perform maintenance and preventive maintenance.*

(2) *A description of the control and operation of the article's components and systems should also provide enough detail to perform the maintenance at the levels specified in the [technical data].*

(3) *Complete installation instructions for those parts and accessories that are part of the approved [item]. The instructions should include minimum interface instructions and any appropriate specifications, warnings, or cautions for those areas on which articles that are not part of the approved [item] could be installed on the [weapon system] at a later date.*

(4) *The scheduling information provided should ensure the continued [mission capability] of the article. Although the [OEM] does not have to provide specific scheduling information for each part, the lack of such information on any part should not adversely affect the continued [mission capability] of the article.*

(5) *If the article is removed from the [weapon system], the [technical data] should provide maintenance and/or overhaul instructions to determine its eligibility for reinstallation on [a weapon system] and continued service use. The disassembly of the article to the piece-part level may be required before returning it to service if the exposure occurs after a considerable number of hours in service.*

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(6) *An inspection program to ensure the continued [mission capability] of the article. Certification tests, analyses, and service experience, if available, should be used to develop the inspection program.*

(7) *Troubleshooting information to address potential malfunctions and provide procedures to rectify them or replace the affected part or component before continued operation.*

(8) *A means to ensure configuration control during maintenance in the [technical data]. This should ensure that the proper parts, components, and combinations of parts and components are identified and conform to the approved design.*

(9) *The list of tools for maintenance should be adequate for completing the work. It may include lists located in the sections of the [technical data] in which the work is described. However, the list of tools and equipment should be located in a manner that facilitates locating and ordering the tools and equipment. Also, the list should include a cross-reference to the section in which the method of using each tool is described. Special tools should be noted, [if] there is a specific regulatory requirement for the use of a special tool when performing maintenance. Calibration requirements should be listed where applicable.*

(B) SECTION IX - OVERHAUL MANUAL OR SECTION

*The overhaul manual or section should include the following information, as appropriate for the article:*

(1) *The [OEM] should clearly define what level or amount of inspection and repair or replacement parts constitutes an overhaul. This is needed because the article must be designed and constructed to minimize the development of an unsafe condition between overhaul periods. This includes articles that are part of the approved design.*

(2) *Recommended overhaul periods.*

(3) *Sufficient details for the disassembly, cleaning, inspection, repairing as necessary, reassembling, final inspecting and/or testing of the article. Necessary warnings and guidance should also be provided. A means to ensure configuration control so that the proper parts, components, and any combinations that comply with the approved design are identified during assembly or replacement.*

(4) *A means to ensure configuration control so that the proper parts, components, and any combinations that comply with the approved design are identified during assembly or replacement.*

(5) *Cleaning instructions. The [technical data] should emphasize the proper cleaning methods and contain appropriate warnings if improper cleaning could adversely affect the quality of the inspection.*

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(6) *When piece parts and components are exposed, they should be subjected to appropriate inspections to determine their eligibility for reinstallation in the top assembly for continued service. An adequate inspection program for the article, with threshold or opportunity inspections, is essential for the continued [mission capability] of the...product.*

(7) *The accuracy and reliability of inspection techniques should be consistent with the criticality of the parts being inspected and the types of defects for which the part is being inspected. The [technical data] should identify parts and key features or areas for which special emphasis or a higher awareness is needed to assure continued [mission capability]. Adequate inspection criteria should enable the appropriate inspection of each part, sub-assembly, assembly, module, system and component. Inspections should identify the required action at each level, such as part replacement, repair, or further detailed inspection.*

(8) *Adequate inspection criteria should enable the appropriate inspection of each part, sub-assembly, assembly, module, system and component. Inspections should identify the required action at each level, such as part replacement, repair, or further detailed inspection.*

(9) *Details for all fits and clearances for the article and components, structural integrity, and functionality of new and worn parts.*

(10) *Worn or substandard parts that do not meet the [technical data] inspection limits cannot be returned to service. To ensure [mission capability], such parts should be either replaced or repaired. While the [technical data] does not have to include repairs for all piece parts, it should identify when or under what conditions parts must be replaced or repaired. If a part or component fails to meet the inspection requirements of the [technical data], replacement is an acceptable alternative to repair. However, the [OEM] should at a minimum provide inspection techniques and criteria to enable a determination of continued [mission capability].*

(11) *[DOD] may allow and approve other repair data that is not part of the [OEM technical data]. However, when design change data for repair or alteration constitutes a major change to the [OEM] design, the need for such repair or alteration information in the [technical data] should be evaluated, because the repair or alteration could introduce a new feature that does not exist in the [OEM] design.*

(12) *Test acceptance criteria. They can be identified as limits, although not as [a mission capability] limitation.*

(13) *Calibration requirements (frequency, accuracy, and protocol to be used) for all testing and measurement equipment used to return the article and its component parts to service.*

(14) *Instructions for testing the article after overhaul.*

(15) *Special containers, equipment, and tools that may be necessary to comply with the instructions for storage should be identified. The storage limits*



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*should also include any environmental restrictions, such as limits for temperature or humidity.*

*(16) The list of tools for overhaul should be adequate for completing the work. It may include lists located in other sections of the [technical data] in which the work is described. Also, the list should include a cross-reference to the section in which the method of using each tool is described or the tools are used. Any special tools should be highlighted, [when required by regulation].*

ARSA recommends that the Panel incorporate standards like the above for the information which must be included in the OMIT-other-than-DMPD complete set of technical data in which DOD has unlimited rights.

The Joint Industry Policy includes other concepts that should be part of the Panel's recommendations for OMIT-other-than-DMPD:

- Information incorporated in maintenance or overhaul technical data is not DMPD.
- Any inspections, repairs, methods, techniques, practices or processes that are necessary for a scheduled maintenance event cannot be DMPD.
- Component-level maintenance data must be included in OMIT-other-than-DMPD, including information on articles or parts that may be maintained or altered in a shop prior to installation.
- Once any repair, process, procedure or instruction is included in OMIT-other-than-DMPD, then it cannot be removed.

Civil aviation regulations also provide the Panel with guidance for distinguishing what constitutes an "overhaul" versus a "rebuilding" event. In DOD regulations, both "overhaul" and "rebuilding" are included in the "definition of depot-level maintenance and repair."<sup>3</sup> In FAA regulations, however, "overhaul" and "rebuild" are two distinct actions. In short, an "overhaul" is a maintenance event that brings an item back to at least its original condition (i.e., mission capable condition). A "rebuild" must be "tested to the same tolerances and limits as a new item, using either new parts or used parts that either conform to new part tolerances and limits or to approved oversized or undersized dimensions."<sup>4</sup> [Emphasis added.]

The "other than DMPD" exclusion to DOD's unlimited rights in OMIT must apply only to the "rebuilding" portion of depot-level maintenance and repair technical data. Specifically, only the data pertaining to the "tolerances and limits of a new item" to be the DMPD as it relates to the creation of a new, original article. Indeed, the term "rebuilding" is often used interchangeably with the term "remanufacturing," suggesting a

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<sup>3</sup> See 10 U.S.C. § [2460\(a\)](#).

<sup>4</sup> See 14 C.F.R. § [43.2\(b\)](#).

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direct link to the detailed manufacturing and process data in which DOD's rights are currently restricted by statute.

Conversely, none of the requirements of an overhaul require DMPD; therefore, the complete set of OMIT-other-than-DMPD technical data must always include all instructions required to overhaul any of DOD's assets and components thereof.

(3) Clarify DOD's unlimited right to all updates and modifications to OMIT technical data throughout the life-cycle of the system.

The DOD's inability to predict the OMIT that might be needed during the entire life-cycle of each weapon system reveals the need for a legal mechanism to obtain OMIT that is not specifically defined during the development, acquisition and contracting process. In particular, DOD's logistics and sustainment commands need the ability to assert and use such rights independently of any contracts signed during the development and manufacture phases. Many of DOD's weapon systems take decades to mature, and some are expected to remain operational for nearly a century! To ensure continued operational readiness, DOD cannot be held "hostage" for additional, unreasonable fees for such information.

While a complete set of OMIT cannot be precisely defined during the early stages of a program, the standard for initial information as suggested in (2) can be augmented as designs, environment and usage dictate. In civil aviation, regulations require a design approval holder to furnish a complete set of Instructions for Continued Airworthiness (analogous to OMIT-other-than-DMPD) to the owner of each aircraft, engine, or propeller upon delivery. See 14 C.F.R. § [21.50\(b\)](#). This regulation also mandates that ICA (technical data) be made available to all others required by the government to comply with such instructions (e.g., independent maintenance providers). Further, it states that any changes to the data must be made available, as well. Modified for the context of DOD operations, 14 C.F.R. § [21.50\(b\)](#) provides a regulatory guideline for the Panel:

*"Thereafter, the [OEM] must make [technical data] available to any other person required by [DOD] to comply with any of the terms of those [technical data]. In addition, changes to the [technical data] shall be made available to any person required by [DOD] to comply with any of those [technical data]."*

FAA Orders and Policy Statements further clarify this requirement, stating, among other things that:

- The design approval holder may not charge exorbitant fees for the required technical data or updates; and

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- Aircraft owners may provide the technical data to any maintenance provider of their choice (i.e., the owners cannot be prohibited from competitively procurement of maintenance services).<sup>5</sup>

Moreover, ARSA member Piedmont Propulsion Systems, LLC received a legal interpretation of 14 C.F.R. § [21.50\(b\)](#) confirming that OEMs (“design approval holders” in FAA parlance) are already required to provide ICA (analogous to OMIT) to DOD and, by extension, any maintenance provider designated by DOD for the thousands of FAA-certificated aircraft operated by DOD.<sup>6</sup> These civil aviation safety regulations, orders and policies provide even stronger examples for the Panel to consider.

(4) Avoid or limit licensing restrictions by OEMs.

The current statute and regulations prescribe unlimited government rights in OMIT-other-than-DMPD.

However, as the Panel has discussed, often some other level of rights is negotiated – particularly for depot-level maintenance instructions where the line between repair/overhaul and manufacturing is now unclear. The DOD is cautioned against negotiating away its rights and thereby restricting OMIT technical data availability.

ARSA does not oppose reasonable restrictions on OMIT technical data. For example, DOD can certainly restrict use of OMIT data to use in competing for and fulfilling requirements under United States Government contracts. Similarly, it might be reasonable to restrict distributing OMIT to anyone other than persons who must comply with the information when competing for and fulfilling requirements under United States Government contracts.

However, the DOD’s limits on OMIT data rights should not extend beyond these simple, reasonable restrictions that allow the government to obtain open and honest competition for its systems, while providing OMIT data developers with basic protections.

Proprietary right restrictions on OMIT technical data should never threaten continued operational readiness by:

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<sup>5</sup> See FAA Order [8110.54A](#)

(<https://www.faa.gov/documentLibrary/media/Order/ND/Order%20%208110.54.pdf>) and FAA Policy Statement [PS-AIR-21.50-01](#)

([http://rgl.faa.gov/Regulatory\\_and\\_Guidance\\_Library/rgPolicy.nsf/0/757c84ac9becec27862579d00054df95/\\$FILE/PS-AIR-21.50-01.pdf](http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgPolicy.nsf/0/757c84ac9becec27862579d00054df95/$FILE/PS-AIR-21.50-01.pdf)).

<sup>6</sup> See [FAA Letter to Piedmont Propulsion Systems](#), dated Jan. 2, 2015. (available at <http://www.piedmontpropulsion.com/propeller-maintenance-news>)

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- Impeding DOD's ability to perform any maintenance action, including depot-level activity, entirely within DOD's depots, at DOD's sole option.
- Prohibiting DOD from providing OMIT to parties who can reasonably compete for DOD maintenance contracts, or any portion thereof.
- Prohibiting DOD from providing such OMIT to any contractor or subcontractor for use in fulfilling a DOD contract.
- Restricting DOD or any DOD contractor from reverse-engineering a system or any of its sub-system, component or part therein.
- Restricting DOD or any DOD contractor from developing alternative methods of OMIT, testing, modifying, upgrading or rebuilding.
- Requiring DOD or any DOD contractor to purchase parts or services or technical support from the original developer of the technical data.
- Allowing any original developer to predicate DOD's access to parts or technical support on any limitations or restrictions in DOD's (or DOD contractors') rights in OMIT.

Similarly, DOD should never set as a requirement of a solicitation that a bidder be "authorized" or "licensed" or "approved" an OEM or any original developer of systems or OMIT. Presently many DOD contracting offices require that maintenance contractors be "OEM licensed" (or "OEM authorized" or "OEM approved") in order to bid for and fulfill DOD maintenance contracts. The most frequent justification is that this requirement is the only means of ensuring that the maintenance contractor has the correct OMIT technical data. DOD should specifically prohibit this practice in conjunction with clarifying DOD's rights to OMIT technical data as described herein.

DOD should be able to assure that any contractor has or will receive the correct technical data due to DOD's rights. DOD should never empower the original developer – who is usually a competitor in the solicitation in question – to influence the competitive process by pre-vetting/-approving/-licensing all over so-called competitors! Requiring "OEM-licensed" contractors immediately cedes all determination of capability to the OEM – not the government. It further allows the OEM to control the pricing because OEM-licensed suppliers are typically forced to purchase parts at high list prices (as opposed to the government's discounted or most-favored nation pricing).

OEM license agreements also tend to eliminate innovation and continuous improvement during the life-cycle of a weapon system. ARSA members report clauses in license agreements that contain all of the following types of restrictions on competition, innovation and technology:

- Prohibitions on competing for maintenance contracts that contain Cost per Flight Hour ("CPFH") pricing structures (e.g., Performance Based Logistics contracts),

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therefore eliminating CPFH and PBTH competition at the sole discretion of the OEM itself.

- Requirements that licensees make airworthiness determinations in accordance with the OEM's instructions and NOT according to relevant government regulations (whether in the form of the FAA or DOD). This restriction allows the OEM unilateral control of "Beyond Economic Repair" (BER) or "Unrepairable/Scrap" determinations that, in turn, could force DOD to suffer both higher replacement costs reduced Mission Capable rates;
- Prohibitions on performing value-added engineering functions such as the design and development of product improvements, life extension programs, improved reparability and alternative materials and technologies.
- Requirements to only use "OEM approved" parts (as opposed to government-/DOD-approved).
- Geographic restrictions.
- Requirements to pay licensing fees, resulting in DOD effectively paying for the same rights twice.
- Assertions that any inventions or innovations developed during the term of the license – whether or not the OEM's technical data was used – become property of the OEM, therefore stifling the ability to introduce new technologies or processes.
- Requiring access to competition-sensitive customer, volume and pricing data.

For these reasons, the Panel must protect and reinforce DOD's extensive rights in OMIT, and clearly limit the ability of original developers to influence or impede competition.

(5) Ensure technical data rights are an evaluation factor.

DOD should evaluate rights in technical data in any weapon system procurement. Life-cycle operational readiness costs are ultimately magnitudes higher than the initial acquisition. Therefore, competition *throughout the system's life-cycle* is the essential element for ensuring DOD is able to fulfill its missions in a cost-effective manner. In order to foster and promote the "real competition" sought by BBP 3.0 throughout a system's life-cycle, DOD needs extensive rights in the complete set of OMIT technical data. These rights will be worth much more to DOD than any upfront acquisition price.

In addition to evaluating rights in technical data, DOD should also evaluate the OMIT's content. For example, a complete set of maintenance manuals containing very thorough depot-level instructions enables DOD to have control over life-cycle costs and mission capability. By contrast, a "thin" set of information with few instructions, provides comparatively little value to DOD and can lead to higher life-cycle costs and lower mission capability. Thus, DOD should estimate the relative value of technical data and data rights during the entire acquisition process.

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## Conclusion

ARSA believes that the precedent set by civil aviation regulations requiring instructions for continued airworthiness is easily transferrable to the military and national security environment requiring continued mission and operational readiness. We look forward to helping to ensure the government is as effective and efficient as possible. Please call upon us if you wish further information from the association's team or its members.

Sincerely,



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